



Law Society
of Scotland

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Years
1949-2019

Stage 1 Briefing

Census (Amendment) (Scotland) Bill

February 2019



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Equalities Law sub-committee previously responded to the Culture, Tourism, Europe and External Affairs Committee's call for evidence on the Census (Amendment) (Scotland) Bill and has the following comments for consideration at Stage 1 of the Bill process.

General comments

We welcome the proposed inclusion of questions in the census concerning sexual orientation and gender identity. We agree with the approach of amendments to the Census Act 1920 to clarify that it will be purely voluntary to provide answers to the questions concerning these subjects.

Although the actual inclusion or wording of any such questions is not within the scope of this Bill, being left to regulations in due course, a substantial amount of evidence was provided on a number of issues around how such questions might be framed and understood.

Structure of the Bill

Section 1 of the Bill amends the Census Act 1920 in three ways.

Firstly, the schedule listing the issues that questions can be asked on in a census is amended. This list of particulars includes 'sex' which would be amended to be "sex (including gender identity)".

Secondly, 'sexual orientation' would be added to that list.

Finally, section 8 of the Census Act 1920 is amended to ensure that no penalties can be imposed for failure to answer questions in relation to sexual orientation or aspects of gender identity (these aspects to be defined through an Order in Council).

The reason that sexual orientation and gender identity are treated differently in the drafting is because the Scottish Government considers gender identity to already be an element of sex for the purposes of the census. The purpose of expressly including it is to ensure that specific questions on gender identity can be separated out from the mandatory question on sex and made clearly voluntary.

Gender identity and sex

The Stage 1 Report of the Culture, Tourism, Europe and External Affairs Committee highlighted a significant amount of concern over the perceived conflation of sex and gender identity, and discussion around the purpose of questions on sex, gender identity, and transgender status/history, as well as the potential for confusion.

We agree that clarity is important, and those answering the questions as well as those interpreting and using the data must be able to understand the questions being asked. This includes ensuring that people are aware of the relevant guidance in place, and that such guidance is developed in consultation with all key groups. It is clear that further work is required on this issue to reach consensus of understanding of what is meant by 'sex' and 'gender identity' in this context.

In light of the evidence received, the Culture, Tourism, Europe and External Affairs Committee concluded that the use of the term 'gender identity', in particular in the way that it was used together with sex, caused confusion. They recommended that the phrase be removed from the Bill, and that 'trans-status' be included on the same basis as sexual orientation. This would leave the particular of 'sex' unchanged, and questions in the census relating to sex would remain a mandatory question. This would require an amendment to the Bill as introduced.

Consultation

The scope of the issues raised during the call for evidence emphasises the importance of full consultation on any new questions being considered for inclusion in the next census. We would urge that these questions be developed in conjunction with stakeholders and subject to further consultation in order to minimise any unnecessary interference and to maximise the response rate and the quality of the data elicited.

For further information, please contact:

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